

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Megan Ault	Team: Team # 8	CCRB Case #: 200804979	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 04/04/2008	Location of Incident: § 87(2)(b)	Precinct: 107	18 Mo. SOL 10/4/2009	EO SOL 10/4/2009	
Date/Time CV Reported Mon, 04/07/2008 5:00 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 04/07/2008 5:00 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Andrew Tolson	31899	933412	107 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christoph Rizzo	05355	935605	107 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Tolson	Abuse: PO Andrew Tolson threatened to arrest § 87(2)(b)	§ 87(2)(b)
B.POM Andrew Tolson	Abuse: PO Andrew Tolson threatened to notify Administration for Children's Services.	§ 87(2)(b)

Synopsis

§ 87(2)(b) filed her complaint in-person at the CCRB on April 7, 2008. Around 12:00 AM on April 4, 2008, PO Andrew Tolson and PO Christopher Rizzo arrived at § 87(2)(b) apartment and stated that her downstairs neighbor had made a noise complaint. § 87(2)(b) denied that noise had been coming from her apartment, and the officers left. § 87(2)(b) sister, § 87(2)(b) was present in the apartment at that time. § 87(2)(b) claimed that her sister started banging on the floor and cursing at her downstairs neighbor. The officers returned to § 87(2)(b) apartment and stated that they had heard her harassing her neighbor. § 87(2)(b) alleged that PO Tolson threatened to arrest her and threatened to notify the Agency of Child Services if her behavior continued (**Allegations A and B**).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) is a § 87(2)(b)-old Hispanic female with brown hair and brown eyes. She is 5'0" tall and weighs 110 pounds. § 87(2)(b) appeared at the CCRB on April 7, 2008 (encl. 4A).

For the last eight months § 87(2)(b) has had an ongoing dispute with her downstairs neighbor, § 87(2)(b). § 87(2)(b) often bangs on the walls when § 87(2)(b) or her children make the slightest noise, and has repeatedly cursed at § 87(2)(b) and called her children "bastards."

Some time before 1:00 AM on April 4, 2008, two uniformed police officers arrived at § 87(2)(b) apartment. § 87(2)(b) did not see the car they arrived in. PO1, identified through investigation as PO Tolson, was a white male in his 30's with dark hair, no glasses and no facial hair. He was about 6 feet tall and had an average build. PO2, identified through investigation as PO Rizzo, was a 28-to-30-year-old Hispanic male with dark hair, dark eyes, and no glasses. He was 5'5" tall and had a heavy build. PO Tolson told § 87(2)(b) that her neighbors had complained that she was making too much noise. § 87(2)(b) tried to explain that her son had been making the noise by jumping up and down in his crib, but PO Tolson seemed skeptical and told her that they did not want to come again. The officers then left.

§ 87(2)(b) sister, § 87(2)(b) was visiting at the time. About 30 to 45 minutes after the officers left, § 87(2)(b) started stomping on the floor and yelling, "Call the police now, bitch." The same two police officers then returned to § 87(2)(b) apartment. PO Tolson stated that they had heard her calling her neighbor a "bitch" and harassing her from downstairs. PO Tolson told § 87(2)(b) that if she continued harassing her neighbors she would be arrested and her children would be taken from her (**Allegations A and B**). § 87(2)(b) did not tell the officers that it was her sister who had been yelling. The officers left without issuing any tickets or summonses. § 87(2)(b) declined to mediate her complaint.

Results of Investigation

Witness Statement: § 87(2)(b)

§ 87(2)(b) provided the CCRB with a phone statement on July 28, 2008 (encl. 5A). § 87(2)(b) had been babysitting for her sister on April 3, 2008. Two officers arrived at her sister's apartment between 11:00 PM and 12:00 AM, stating that they had received a noise complaint from § 87(2)(b) downstairs neighbor. PO1, identified through investigation as PO Tolson, was a white male in his late 30's around 6'2" tall and had blonde hair and an athletic build. § 87(2)(b) could not describe the second officer present. She stated that her sister had been watching television prior to the officers' arrival, but had not been making much noise. § 87(2)(b) explained that her babies had been shaking their crib, but no other noise had been coming from her apartment. The officers left. § 87(2)(b) started stomping on

the floor and said, "Call the cops now, bitch." Her sister tried to stop her, but she was very angry at her sister's neighbors.

The officers returned shortly after and stated that they had heard § 87(2)(b) making noise and threatening her downstairs neighbor. PO Tolson stated that if they had to return again, charges would be pressed and § 87(2)(b) babies would be taken from her. The officers left the apartment without taking further action.

Witness Statement: § 87(2)(b)

§ 87(2)(b) provided the CCRB with a phone statement on July 28, 2008 (encl. 6A). Shortly before midnight on April 3rd, 2008, § 87(2)(b) called the police because her upstairs neighbor, § 87(2)(b) was banging on the floor and making an excessive amount of noise. Two white or Hispanic male officers arrived; § 87(2)(b) could not describe them further. § 87(2)(b) informed them of the situation, and they went upstairs to speak with § 87(2)(b). § 87(2)(b) did not go upstairs with them, but stood in the hallway, where she could hear their conversation. § 87(2)(b) denied that she had been making noise. The officers returned downstairs. § 87(2)(b) asked the officers to stay in her apartment for a few minutes so they could hear § 87(2)(b) making noise. One of the officers remained in her apartment, and the other moved the police car to give the appearance that they had left. As soon as he moved the car, § 87(2)(b) started pounding on her floor and screamed, "Bitch, now call the police!"

The officers returned upstairs and confronted § 87(2)(b). § 87(2)(b) listened again from the hallway, where she could hear what they said. § 87(2)(b) was under the impression that the officers had left and returned again, so she denied calling her neighbor, "bitch." The officers warned her not to bother § 87(2)(b) and said that they did not want to be called back to the location because she was harassing her neighbor again. § 87(2)(b) did not remember the officers threatening to arrest § 87(2)(b) nor did she remember them mentioning that her children might be taken away, or anything about the Agency of Child Services.

Officer Statement: PO Andrew Tolson

PO Andrew Tolson appeared at the CCRB on August 29, 2008 (encl. 7D). He is a § 87(2)(b)-old white male with brown eyes and brown hair. He is 6'2" tall and weighs 210 pounds. On April 4, 2008, he and his partner, PO Rizzo, were assigned to patrol Sector D in marked RMP number 2249. PO Tolson was in uniform.

PO Tolson had the following entries in his memo book regarding this incident: "2350: (52) § 87(2)(b); 0010: 91," (encl. 7A).

PO Tolson stated that he and his partner received a radio run regarding a neighborly dispute at § 87(2)(b) in Queens around 12:00 AM on April 4, 2008. They arrived at the location and spoke with a husband and wife who lived in an apartment on the ground floor of the house. The husband and wife, identified through investigation as § 87(2)(b) and § 87(2)(b) stated that their upstairs neighbor, identified through investigation as § 87(2)(b) yells and screams at them through the ceiling on a regular basis. They stated that each time police respond to the location, § 87(2)(b) denies doing so, and resumes her behavior once they leave.

PO Tolson and PO Rizzo went upstairs and spoke to § 87(2)(b) who stated that her downstairs neighbors are crazy, and that she never made any noise. PO Tolson noticed that there was another woman in § 87(2)(b) apartment, but he did not know their relationship. PO Tolson asked § 87(2)(b) not to make excessive noise, and the officers returned to the house's § 87(2)(b) floor. PO Tolson then sat in § 87(2)(b)'s living room at her request while PO Rizzo pulled the patrol car around the corner, to give the appearance that the officers had left. PO Tolson stated that as soon as the patrol car was out of sight, § 87(2)(b) started banging on her floor and screaming, "Yo, bitch, you called the police. I'm going to kill you." § 87(2)(b) continued screaming and cursing in that fashion for several minutes. PO Tolson could clearly hear her as he sat in § 87(2)(b)'s living room. PO Tolson radioed his partner to inform him of the situation, and asked that he return to the location. PO Tolson and PO Rizzo then went upstairs to speak with § 87(2)(b) again. PO Tolson informed her that he had heard her making excessive noise and threatening her

downstairs neighbors. § 87(2)(b) stated that § 87(2)(b) harasses her on a regular basis. PO Tolson told § 87(2)(b) that she had just been harassing her neighbors, and that the behavior needed to stop. PO Tolson informed § 87(2)(b) that if they had to return for the same reason, they would issue her a summons and possibly arrest her for harassment. PO Tolson did not remember whether or not he discussed what would happen to § 87(2)(b) children in the event she was arrested. PO Tolson stated that if § 87(2)(b) were arrested and she could not arrange for the care of her children, the Agency of Child Services would have to be contacted.

Officers not Interviewed

§ 87(2)(g)

Communications Records

SPRINT

The SPRINT indicates that on April 3, 2008, at 11:09 PM, an individual called 911 to report a neighborly dispute at § 87(2)(b) in Queens. A female who identified herself as § 87(2)(b) called again at 11:40 PM stating that she was still waiting for a unit to respond. At 12:10 AM Unit D from the 107th Precinct stated that a non-crime had been corrected (encl. 8A).

Police Documents

Roll Call

The 107th Precinct Tour 1 roll call for April 4, 2008, states that PO Tolson and PO Rizzo were assigned to patrol Sectors D, G, H and I in RMP 2249 from 11:15 PM until 7:50 AM (encl. 8A).

Civilian Criminal History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Officer History

The CCRB has never substantiated an allegation of misconduct against PO Tolson (encl. 1A).

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) stated that two officers arrived at her apartment on the evening in question. She described PO1 as a white male in his 30's with dark hair, an average build, and around 6 feet tall. PO2 was a 28-30-year-old Hispanic male who was 5'5" tall and had a heavy build. § 87(2)(b) attributed all of the alleged misconduct to PO1. PO Tolson is 6'2" tall and weighs 230 pounds, and PO Rizzo is 5'9" tall and weighs 225 pounds. Besides closely matching § 87(2)(b) description of the subject officer, PO Tolson acknowledged discussing the possibility of arrest with her. § 87(2)(g)

Undisputed Facts

It is undisputed that PO Tolson and PO Rizzo responded to § 87(2)(b) residence in response to a noise complaint filed by her downstairs neighbor, § 87(2)(b). It is undisputed that after they spoke with § 87(2)(b) someone inside her apartment began yelling and cursing at § 87(2)(b). It is undisputed that PO Tolson heard this take place. It is not in dispute that PO Tolson and PO Rizzo returned to § 87(2)(b) apartment at which point PO Tolson informed § 87(2)(b) that if she continued to harass her neighbor, she could be arrested.

Disputed Facts

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(b) stated that PO Tolson threatened to take her children away from her, and her sister corroborated this assertion. PO Tolson could not remember discussing § 87(2)(b) children with her. He stated during his interview that had § 87(2)(b) been arrested and she was unable to arrange for the care of her children, the Agency of Child Services would be contacted. § 87(2)(b) who overheard the officers speaking with § 87(2)(b) from the bottom of the stairwell, did not remember any discussion of § 87(2)(b) children. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A: PO Tolson threatened to arrest § 87(2)(b)

Based on the statements of everyone involved, PO Tolson heard someone in § 87(2)(b) apartment harassing § 87(2)(b) through the ceiling. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B: PO Tolson threatened to notify the Agency of Child Services.

§ 87(2)(b) stated that PO Tolson said that her children would be taken from her if she persisted in harassing her neighbor. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: